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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 CHAD RICHIE,

11 Plaintiff,

12 v.

13 JOHN DOE 1, ET AL.,

14 Defendant(s).
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Case No. CV 17-5833-JAK (KK)

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

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17 I.

18 **INTRODUCTION**

19 On August 4, 2017, Plaintiff Chad Richie (“Plaintiff”), proceeding pro se
20 and in forma pauperis, constructively filed¹ a Complaint pursuant to 42 U.S.C. §
21 1983 (“Section 1983”) against John Doe #1 and John Doe #2 in their individual
22 capacity. ECF Docket No. (“Dkt.”) 1. As discussed below, the Court dismisses
23 the Complaint with leave to amend.

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27 ¹ Under the “mailbox rule,” when a pro se prisoner gives prison authorities a
28 pleading to mail to court, the court deems the pleading constructively “filed” on
the date it is signed. Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010).
(citation omitted); Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009) (stating
the “mailbox rule applies to § 1983 suits filed by pro se prisoners”).

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On August 4, 2017, Plaintiff constructively filed the Complaint against John Doe #1, a deputy sheriff in the Los Angeles Deputy Sheriff's Transportation Department, and John Doe #2, a deputy sheriff at the Los Angeles County Superior Courthouse ("Defendants") in their individual capacity. Dkt. 1, Compl. at 2-3. Plaintiff alleges on August 4, 2017, John Doe #1 drove the transport vehicle recklessly causing Plaintiff to fall out of his seat while wearing wrist and ankle restraints, resulting in injuries to Plaintiff's hand, back, neck, and arm. Id. at 3, 5. Plaintiff alleges John Doe #2 was deliberately indifferent to Plaintiff's complaints of injury and refused to refer him to medical personnel. Id. at 3, 6. However, a sergeant arrived who insisted an "injury report" be written and Plaintiff was then evaluated by a doctor at the hospital. Id. at 5-6. Plaintiff alleges he "is now physically unable to perform basic physical duties such as prolonged standing, sitting, or heavy lifting." Id. at 7. Plaintiff seeks \$40,000,000 in compensatory and punitive damages. Id.

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As Plaintiff is proceeding in forma pauperis, the Court must screen the Complaint and is required to dismiss the case at any time if it concludes the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

In determining whether a complaint fails to state a claim for screening purposes, the Court applies the same pleading standard from Rule 8 of the Federal Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See *Watison v. Carter*,

1 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a
2 “short and plain statement of the claim showing that the pleader is entitled to
3 relief.” Fed. R. Civ. P. 8(a)(2).

4 A complaint may be dismissed for failure to state a claim “where there is no
5 cognizable legal theory or an absence of sufficient facts alleged to support a
6 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
7 (citation and internal quotation marks omitted). In considering whether a
8 complaint states a claim, a court must accept as true all of the material factual
9 allegations in it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011).
10 However, the court need not accept as true “allegations that are merely
11 conclusory, unwarranted deductions of fact, or unreasonable inferences.” In re
12 Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citation and internal
13 quotation marks omitted). Although a complaint need not include detailed factual
14 allegations, it “must contain sufficient factual matter, accepted as true, to state a
15 claim to relief that is plausible on its face.” Cook v. Brewer, 637 F.3d 1002, 1004
16 (9th Cir. 2011) (citation and internal quotation marks omitted). A claim is facially
17 plausible when it “allows the court to draw the reasonable inference that the
18 defendant is liable for the misconduct alleged.” Id. (citation and internal quotation
19 marks omitted). The complaint “must contain sufficient allegations of underlying
20 facts to give fair notice and to enable the opposing party to defend itself
21 effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

22 “A document filed pro se is to be liberally construed, and a pro se complaint,
23 however inartfully pleaded, must be held to less stringent standards than formal
24 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
25 2008) (citations and internal quotation marks omitted). “[W]e have an obligation
26 where the p[laintiff] is pro se, particularly in civil rights cases, to construe the
27 pleadings liberally and to afford the p[laintiff] the benefit of any doubt.” Akhtar v.
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1 Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation marks
2 omitted).

3 If the court finds the complaint should be dismissed for failure to state a
4 claim, the court has discretion to dismiss with or without leave to amend. Lopez v.
5 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted
6 if it appears possible the defects in the complaint could be corrected, especially if
7 the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,
8 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint
9 cannot be cured by amendment, the court may dismiss without leave to amend.
10 Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th
11 Cir. 2009).

12 IV.

13 DISCUSSION

14 A. PLAINTIFF FAILS TO STATE A CLAIM FOR DELIBERATE 15 INDIFFERENCE AGAINST JOHN DOE #2

16 1. Applicable Law

17 Prison officials or private physicians under contract to treat inmates “violate
18 the Eighth Amendment if they are ‘deliberately indifferent to a prisoner’s serious
19 medical needs.’” Peralta v. Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014) (quoting
20 Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)
21 (alterations omitted)); Farmer v. Brennan, 511 U.S. 825, 828, 114 S. Ct. 1970, 128
22 L. Ed. 2d 811 (1994). To assert a deliberate indifference claim, a prisoner plaintiff
23 must show the defendant: (1) deprived him of an objectively serious medical need,
24 and (2) acted with a subjectively culpable state of mind. Wilson v. Seiter, 501 U.S.
25 294, 297, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991).

26 The Ninth Circuit has identified three situations in which a medical need is
27 considered serious: (1) “[t]he existence of an injury that a reasonable doctor or
28 patient would find important and worthy of comment or treatment”; (2) “the

1 presence of a medical condition that significantly affects an individual's daily
2 activities"; or (3) "the existence of chronic and substantial pain." Egberto v.
3 Nevada Dep't of Corr., 678 F. App'x 500, 504 (9th Cir. 2017)² (citing McGuckin v.
4 Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled in part on other grounds
5 by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc)).

6 "A prison official is deliberately indifferent under the subjective element of
7 the test only if the official 'knows of and disregards an excessive risk to inmate
8 health and safety.'" Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014)
9 (quoting Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004)). "This 'requires
10 more than ordinary lack of due care.'" Id. (quoting Farmer, 511 U.S. at 835).
11 "[T]he official must both be aware of facts from which the inference could be
12 drawn that a substantial risk of serious harm exists, and he must also draw the
13 inference." Id. (quoting Farmer, 511 U.S. at 837). "[D]elay alone, however, is not
14 enough to make out an Eighth Amendment claim; [a plaintiff] must also show that
15 it caused him further harm." Egberto, 678 F. App'x at 504 (citing Berry v.
16 Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994)).

17 2. Analysis

18 Here, Plaintiff sufficiently alleges his injuries required evaluation by a doctor
19 and now interfere with his daily activities. Compl. at 3, 5, 7. Plaintiff alleges John
20 Doe #2 refused to refer Plaintiff to medical personnel after learning of Plaintiff's
21 injuries. Id. at 6. However, Plaintiff admits he was taken to the hospital for
22 evaluation by a doctor. Id. Thus, Plaintiff fails to allege facts showing he was
23 denied medical treatment or that the minimal delay caused by John Doe #2's initial
24 refusal to refer him to medical personnel "caused him further harm." See Berry 39
25 F.3d at 1057 (holding two hour delay in being escorted to medical clinic after
26 noticing blood in plaintiff's urine was insufficient to support a claim for deliberate
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28 ² The Court may cite to unpublished Ninth Circuit opinions issued on or after
January 1, 2007. U.S. Ct. App. 9th Cir. R. 36-3(b); Fed. R. App. P. 32.1(a).

1 indifference, where plaintiff failed to offer evidence “these minor delays caused
2 any harm”); see also Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir. 1990)
3 (holding only delays that cause substantial harm violate the Eighth Amendment).
4 Therefore, Plaintiff has failed to state a claim against John Doe #2 for violation of
5 the Eighth Amendment.

6 **B. DOE DEFENDANTS**

7 “As a general rule, the use of ‘John Doe’ to identify a defendant is not
8 favored.” Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.1980). “However . . . ,
9 where the identity of alleged defendants will not be known prior to the filing of a
10 complaint . . . , the plaintiff should be given an opportunity through discovery to
11 identify the unknown defendants, unless it is clear that discovery would not
12 uncover the identities, or that the complaint would be dismissed on other
13 grounds.” Id.; see also Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir.
14 1999).

15 Accordingly, Plaintiff will be given an opportunity to discover the names of
16 the doe defendants and amend his Complaint. Plaintiff may request leave to
17 conduct limited discovery in order to discover the names of the doe defendants.
18 However, Plaintiff is cautioned that Federal Rule of Civil Procedure 45 (“Rule
19 45”) provides the exclusive method of discovery on non-parties. In addition, a
20 motion for issuance of a Rule 45 subpoena duces tecum should be supported by
21 clear identification of the documents sought and a showing that the records are
22 obtainable only through the identified third party. See Davis v. Ramen, No. 1:06-
23 CV-01216-AWI-SKO-PC, 2010 WL 1948560, at *1 (E.D. Cal. 2010). Plaintiff
24 should act diligently in conducting such investigation, as the Court will only grant
25 extensions of time upon a showing of good cause.

26 Further, Plaintiff is advised that without any named defendants, the Court
27 cannot order service of the complaint. See Augustin v. Dep’t of Public Safety,
28 2009 WL 2591370, at *3 (D. Hawai’i Aug. 24, 2009); see also Soto v. Board of

1 Prison Term, 2007 WL 2947573, at *2 (E.D. Cal. Oct. 9, 2007). Consequently, if
2 Plaintiff files an amended complaint that only names doe defendants, such
3 complaint will be subject to dismissal. See Williams v. Schwarzenegger, 2006 WL
4 3486957, at *1 (E.D. Cal. Dec. 1, 2006).

5 V.

6 **LEAVE TO FILE A FIRST AMENDED COMPLAINT**

7 For the foregoing reasons, the Complaint is subject to dismissal. As the
8 Court is unable to determine whether amendment would be futile, leave to amend
9 is granted. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
10 curiam).

11 Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of the
12 service date of this Order, Plaintiff choose one of the following two options:

13 1. Plaintiff may file a First Amended Complaint to attempt to cure the
14 deficiency discussed above. **The Clerk of Court is directed to mail Plaintiff a**
15 **blank Central District civil rights complaint form to use for filing the First**
16 **Amended Complaint, which the Court encourages Plaintiff to use.**

17 If Plaintiff chooses to file a First Amended Complaint, Plaintiff must clearly
18 designate on the face of the document that it is the "First Amended Complaint," it
19 must bear the docket number assigned to this case, and it must be retyped or
20 rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not
21 include new defendants or new allegations that are not reasonably related to the
22 claims asserted in the Complaint. In addition, the First Amended Complaint must
23 be complete without reference to the Complaint or any other pleading, attachment,
24 or document.

25 An amended complaint supersedes the preceding complaint. Ferdik v.
26 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will
27 treat all preceding complaints as nonexistent. Id. Because the Court grants
28 Plaintiff leave to amend as to all his claims raised here, any claim raised in a

1 preceding complaint is waived if it is not raised again in the First Amended
2 Complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012).

3 The Court advises Plaintiff that it generally will not be well-disposed toward
4 another dismissal with leave to amend if Plaintiff files a First Amended Complaint
5 that continues to include claims on which relief cannot be granted. “[A] district
6 court’s discretion over amendments is especially broad ‘where the court has
7 already given a plaintiff one or more opportunities to amend his complaint.’”
8 Ismail v. County of Orange, 917 F. Supp.2d 1060, 1066 (C.D. Cal. 2012) (citations
9 omitted); see also Ferdik, 963 F.2d at 1261. Thus, **if Plaintiff files a First
10 Amended Complaint with claims on which relief cannot be granted, the First
11 Amended Complaint will be dismissed without leave to amend and with
12 prejudice.**

13 **Plaintiff is explicitly cautioned that failure to timely file a First
14 Amended Complaint will result in this action being dismissed with prejudice
15 for failure to state a claim, prosecute and/or obey Court orders pursuant to
16 Federal Rule of Civil Procedure 41(b).**

17 2. Alternatively, Plaintiff may voluntarily dismiss the action without
18 prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **The Clerk of Court
19 is directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court
20 encourages Plaintiff to use.**

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22 Dated: September 7, 2017

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HONORABLE KENLY KIYA KATO
25 United States Magistrate Judge
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